

August 24, 2004

Pam Paulk  
AE Specifications and Standards Manager  
Office of Capital Improvement Construction  
Coordination  
111 N.W. 1st Street  
13<sup>th</sup> Floor  
Miami, FL 33128

**RE: REQUEST FOR ADVISORY OPINION 04-161**

Dear Ms. Paulk:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on August 18, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether the firm of Malcolm Pirnie, Inc. is permitted to submit a proposal on a pending WASD contract.

In your letter, you informed the Commission that CICC recently issued a Notice to Professional Consultants to provide architectural and engineering services related to the Biosolids Master Plan for the Department of Water and Sewer (WASD). The scope of work requires the firm to develop a biosolids master plan which may include system expansions, modifications and upgrades necessary for WASD to process biosolids at its North District, Central District and South District Wastewater Treatment Plants over a twenty year period. The work may also include assistance in development of request

for proposals, bid evaluations, contract administration, design review and assistance in startup and performance testing.

Malcolm Pirnie is currently providing bond-consulting services for WASD under a recently awarded contract. Addendum 3 to the Notice to Professional Consultants provided that "(p)rime consultants with a current agreement with Miami-Dade County for design or construction management services for Miami-Dade Water and Sewer Department will not be considered for this solicitation. In addition, the prime consultant and their subconsultants selected for award of this solicitation will not be considered for any design projects advertised for the duration of the proposed Bond Consulting Services contract."

Paragraph 2E of the Notice to Professional Consultants for the Bond Consulting Contract also stated that "the engineer may also provide other engineering services for the Department which do no present conflicts of interest relative to its bond consultant services, including but not limited to planning, feasibility and process studies. The engineer will be prohibited from performing any engineering design services under this agreement except demonstration assessment designs."

The Commission found Malcolm Pirnie might be considered for the Biolsolids Master Plan contract as long as the scope of work is limited to planning and engineering activities. Pursuant to the Notice to Professional Consultants, the bond consultant is permitted to perform planning and engineering work for the department. Since the creation of the Biolsolids Master Plan is planning and engineering and does not involve design work, Malcolm Pirnie may be considered for the contract, If any design work is later required for the Biolsolids Master Plan, another contractor must be used.

Therefore, Malcolm Pirnie may be considered for the Biosolids Master Plan agreement. The Notice to Professional Consultants provides that a firm may simultaneously serve as bond consultant and perform planning and engineering work. Since the Biosolids Master Plan will not involve design work, Malcolm Pirnie may be considered for the contract.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

ROBERT MEYERS  
Executive Director

cc: Stephen C. Schwartz, Malcolm Pirnie, Inc.  
Christopher Mazzella, Inspector General